

REMARKS

Claims 1-2 and 8-21 were pending at the time of the Office action. Claims 10, 12-13, and 20-21 have been withdrawn. Claims 1-2, 8-9, 11, and 14-19 stand rejected under 35 U.S.C. § 112, first paragraph, and under 35 U.S.C. § 102(b). Applicants address each of these rejections below.

Claim Amendments

Claims 8, 16, and 18 have been canceled. Claims 1 and 14 have been amended to delete the term “non-immortalized” and to feature activated CD8+ T cells. Claim 11 has been amended to include the word “the.” Claim 15 has been amended to feature CD8+ T cells. Claim 17 has been amended to delete the term “non-immortalized” T cell and to feature CD8+ T cells. Support for the amendments is found, for example, in Example 1 (page 34, line 6 to page 35, line 20) of the specification as filed. Applicants note that each and every element of canceled claim 8 has been incorporated into claim 1, and that each and every element of canceled claim 18 has been incorporated into claim 17.

The present amendments were made solely to expedite prosecution, and applicants reserve the right to pursue any canceled subject matter in this or in a continuing application. No new matter has been added.

Entry of Claim Amendments

Applicants submit herein amendments to the claims after a final Office action. These claim amendments are being submitted in order to respond to the present rejections raised by the Office. As entry of these claim amendments would serve solely to reduce the issues on appeal and would not necessitate an additional search, applicants respectfully request that the claim amendments be entered into the record and considered by the Office.

Rejection Under 35 U.S.C. § 112, First Paragraph

Claims 1-2, 8-9, 11, and 14-19 stand rejected under 35 U.S.C. § 112, first paragraph, for lack of written description. In particular, the Examiner states (page 3) that the term “non-immortalized” is considered new matter because the specification fails “to provide literal support for ‘non-immortalized.’” To expedite prosecution, applicants have amended claims 1 and 17 to delete the term “non-immortalized” and to incorporate each and every element of canceled claims 8 and 18, respectively. In particular, claims 1 and 17, as amended, feature CD8+ cells. In addition, claim 1, as amended, recites “activated CD8+ cells” in the claim preamble, in order to be consistent with the recitation of this phrase at the end of the claim. Likewise, claim 14, as amended, features an activated CD8+ cell. Support for the present amendments is found, for example, in Example 1 (page 34, line 6 to page 35, line 20) of the specification as filed. The claims, as amended,

satisfy the written description requirement and include no new matter; accordingly, the rejection of the claims under 35 U.S.C. § 112, first paragraph, should be withdrawn.

Rejection Under 35 U.S.C. § 102(b)

Claims 1-2, 8-9, 11, and 14-19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Yu et al. (Genes to Cells, 2:457-466, 1997; “Yu”). As noted above, to expedite prosecution, applicants have canceled claims 8, 16, and 18, and have amended claims 1, 14, 15, and 17 to feature activated CD8+ T cells. Yu neither teaches nor suggests that a paramyxovirus vector can transduce a gene into activated CD8+ T cells. Thus, Yu does not teach all of the claim limitations present in amended claims 1, 14, 15, and 17, and dependent claims thereof.

The Examiner states (page 5) that the specific cell surface markers recited in the claims “would be inherently present in the population of PBMCs.” The claims, as amended, are not anticipated either explicitly or inherently by Yu. For CD8+ T cells to become activated, the cells must be exposed to particular stimuli. Yu neither teaches nor suggests that such stimuli are present or that the PBMC cells contain a subset of activated CD8+ T cells. An assertion that the PBMC cells of Yu inherently include activated CD8+ T cells would not be based on any evidence of record and would constitute speculation. Applicants direct the Examiner’s attention to M.P.E.P. § 2112.IV, which states: “Inherency may not be established by probabilities or possibilities” [citation omitted].

Without evidence showing that PBMC cells necessarily include activated CD8+ cells, there is no basis for an anticipation rejection based on inherency. Accordingly, the rejection of the claims under 35 U.S.C. § 102(b) should be withdrawn.

CONCLUSION

Applicants submit that the application is in condition for allowance, and this action is hereby respectfully requested. Enclosed is a Petition to extend the period for replying to the Office action for two months, to and including June 18, 2007, as June 17, 2007 is a Sunday. If there are any charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

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